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THE CORPORATION TRUST COMPANY AND ASSOCIATED COMPANIES

In the incorporation, qualification and statutory representation of corporations, The Corporation Trust Company, C T Corporation System and associated companies deal with and act for lawyers exclusively.

In Kansas, the State Charter Board has recently adopted rules which will have the effect of lengthening the time in which the qualification of a foreign corporation can be accomplished, since applications for certificates of authority must hereafter be on file with the Secretary of State not less than seven days prior to the dates the Board meets, which are the first and third Wednesdays of each month. Verification of financial statements filed as part of the qualification is required by certified public accountants. Bank deposits must also be verified.

In Kentucky, two annual statements will be filed for the first time on or before July 1, 1941, with the Secretary of State. Foreign corporations will file a Statement of Existence, while both Kentucky corporations and foreign corporations will, at that time, place on file a Statement of Process Agent. A fee of $1 is to accompany each statement.

Texas now imposes a stock transfer tax of 3¢ on each $100. face value of par value shares and 3¢ per share on no par value shares. (L. 1941, H. B. No. 8, Art. XV.)

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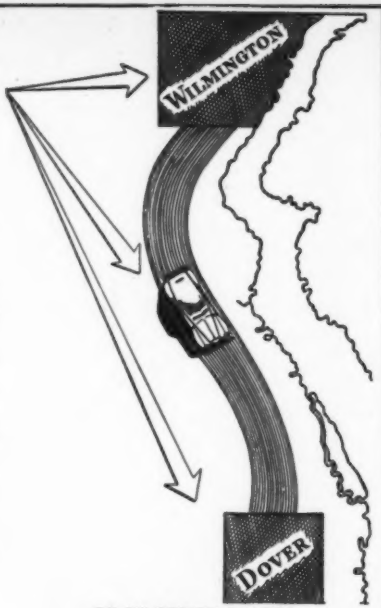

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The Corporation Journal is published by The Corporation Trust Company, monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

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Having offices or representatives in every state and territory of the United States and every province of Canada and a large, trained organization at Washington, these companies:

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What Constitutes Doing Business

Holding Chattel Mortgages

The decisions on the question whether the holding, by a foreign corporation, of a chattel mortgage or mortgages on personal property located within a state in which it is not licensed to do business, would constitute "doing business" there, are not numerous.

Such companies have been held not required to be licensed in cases where

(1) the transaction was an isolated, independent transaction incidental to its business;[1]

(2) the sale which resulted in the execution of the chattel mortgage was a transaction in interstate commerce;[2]

(3) the foreclosure of such a mortgage was not an "action" of the type prohibited by statute to unlicensed foreign corporations;[3]

(4) the chattel mortgage was excuted and payable in another state and its foreclosure could not be regarded as "doing business";[4]

(5) the contract by which the foreign corporation acquired rights to notes and a chattel mortgage, secured by property in the state, was entered into in another state;[5]

(6) the chattel mortgage was taken to secure a previously existing debt contracted outside the state.[6]

On the other hand, where the chattel mortgage was executed in a state in which the foreign corporation was not licensed to do business, this activity has been held sufficient evidence of "doing business" to rule the instrument void and unenforceable by the corporation.[7]

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[1] *Sigel-Campion Live Stock Commission Company v. Haston et al.*, (Kansas) 68 Kan. 749; *Western Loan & Building Co. v. Elias Morris & Sons Co. et al.*, (Ariz.) 29 P. 2d 137.

[2] *Mergenthaler Linotype Co. v. Spokesman Pub. Co.*, (Ore.) 270 Pac. 519.

[3] *Herald & Globe Assn. v. Clere Clothing Co. et al.*, (Vt.) 86 Vt. 141.

[4] *Largilliere Co. v. McConkie et al.*, (Idaho) 210 Pac. 207.

[5] *Muldowney v. McCoy Hotel Co.*, (Wis.) 269 N. W. 655; *Chickering-Chase Brothers Co. v. White*, (Wis.) 127 Wis. 83, 106 N. W. 797.

[6] *Sunny South Lumber Co. v. Neimeyer Lumber Co.*, (Ark.) 63 Ark. 268, 38 S. W. 902.

[7] *Peters v. Brunswick-Balk-Collander Co.*, (Ala.) 6 Ala. App. 507.

Domestic Corporations

Delaware.

Shanik v. White Sewing Machine Corporation decision affirmed by the Delaware Supreme Court. In *Shanik v. White Sewing Machine Corporation,* 15 A. 2d 169, (The Corporation Journal, October, 1940, page 222), the Court of Chancery, New Castle County, ruled that a holder of preference stock, on which accumulated dividends remained unpaid, was to be denied relief under an amendment providing for an optional exchange of such stock for newly created prior preference and new common stock. Upon appeal, the Supreme Court of Delaware has affirmed the holding of the Chancery Court. In its opinion, the court observed: "Here the transfer, if made, is purely voluntary, and any dissentient to the plan may keep his original preference stock with all accumulated and unpaid dividends thereon, and his relative position with reference to the common stock (the only preference to which he was ever entitled) remains precisely the same as if no change had been made. His accumulated dividends in arrear are not, in any sense, wiped out, but remain awaiting a legal fund for their payment, and they must be paid before dividends are paid upon the common stock." *Shanik et al. v. White Sewing Machine Corporation,* Delaware Supreme Court, April 18, 1941. Commerce Clearing House Court Decisions Requisition No. 258173. Hering, Morris, James & Hitchens of Wilmington and H. Paul Shanik of New York, for Joseph Shanik. William H. Foulk and Arthur Garfield Hays, for Norman Johnson, Intervenor. Hugh M. Morris and S. Samuel Arsht, for White Sewing Machine Corporation.

Nevada.

Stockholders of dissolved corporation continuing its ordinary business ruled personally liable with corporation for tort occurring after filing of certificate of dissolution. Plaintiff recovered in the lower court for injuries sustained in a building owned by the corporate defendant in which it was carrying on its business after it had filed a certificate of dissolution with the Secretary of State. The Supreme Court of Nevada affirmed a judgment obtained not only against the corporation but also against two stockholder defendants personally. Referring to these stockholders, the court said: "As to the contention that the defendants Nellie M. Reed, and Burt A. Reed could not be sued personally in this action, we find that after the filing of the certificate of dissolution, and contrary to the provisions of Section 1664, the I. X. L. Laundry Company continued to operate as usual, and no certificate of doing business under a fictitious name was ever filed. Where the business of a corporation, old and new, is continued as usual, and is not limited to settling the affairs of the corporation, then the stockholders become personally liable. 14a. C. J. 1189; 19 C. J. S., Corporations, § 1760; 8 Fletcher Cyc. Corp. 9188, Sec. 5589." *Seavy v. I. X. L. Laundry Co. et al.,* 108 P. 2d 853. Com-

merce Clearing House Court Decisions Requisition No. 250510. Platt & Sinai of Reno, for appellants. L. D. Summerfield and A. R. Schindler of Reno, for respondent.

New York.

Complaint, in stockholder's derivative action against directors for alleged commission and ratification of fraud against company, dismissed as to directors not holding office until after fraud had been committed. In a stockholder's derivative action brought against eighteen of her corporation's present and past directors for an accounting and for damages, based upon an alleged fraud committed against the company by a number of the defendant directors, which was said to have been ratified by the remaining directors who had been subsequently elected, because of their failure to make the fraud known to the stockholders, the New York Supreme Court, Appellate Division, First Department, in *Lifshutz v. Adams et al.*, 20 N. Y. S. 2d 839, had, upon an appeal involving, as appellants, directors who had not been in office at the time of the alleged fraud, ruled as follows: "If as directors, with full knowledge of the so-called fraud, they concealed and ratified it, they can be held accountable. Their failure to use the care and diligence which ordinarily prudent men would have felt constrained to exercise under the circumstances may be the basis of liability." Upon a further appeal to the Court of Appeals, that court ruled that the complaint did not state facts sufficient to constitute a cause of action against the appellant directors who had not been elected to office until after the alleged fraud had been committed, drawing a distinction as follows: "Of course, the effects of a fraudulent act are, in a sense, continued by subsequent concealment, but the act itself is not continuous. The subsequent concealment of the transaction was not part of the original fraud, but another and different breach of fiduciary duty, from which no damage is here shown to have been sustained by the corporation." *Lifshutz v. Adams et al.*, 285 N. Y. 180, 33 N. E. 2d 83. Commerce Clearing House Court Decisions Requisition No. 255830. Louis Boehm, of New York City, for plaintiff, respondent and appellant. Inzer B. Wyatt, of New York City, for defendants, appellants and respondents.

Foreign Corporations

Arkansas.

Corporation which had carried on business in several counties without being licensed, held not subject to payment of statutory penalty to more than one county, where it had qualified after first penalty was imposed. In *State ex rel. Independence County v. Alexander Film Co.*, decided by the Arkansas Circuit Court, Independence County, November 30, 1938, (The Corporation Tax Service, Arkansas, ¶ .409; The Corporation Journal, February, 1939, page 320), the defendant, an unlicensed foreign corporation, entering into contracts with local merchants for the manufacture of advertising

films and for their exhibition in local theatres, was held to be doing business and was subjected to a penalty of $1,000, recovered by Independence County. This penalty was paid and the defendant in that action obtained authority to do business in the state under Secs. 2247 to 2251, inclusive, of Pope's Digest of the Arkansas laws. Subsequently, this action was instituted in another county, Phillips County, in which the same company, an appellant in this suit, had also been doing business without being licensed prior to the imposition of the penalty in the Independence County action and a fine of $1,000 was imposed by the Circuit Court of Phillips County. Upon appeal, in which another company, similarly situated, joined as an appellant, the Supreme Court of Arkansas said: "The question arising on this appeal is whether appellants were subject to further penalties by counties in which they did business without receiving authority to do so, after each had paid a penalty of $1,000 in another county of the state for the same offense, whereupon they obtained a certificate of authority as provided by the sections of Pope's Digest aforesaid before the actions in Phillips County were filed against them." The court ordered the judgments reversed and the complaints dismissed, noting that the purpose of the statute was not to raise revenue either for the state or any county and that the statute, being penal, was to be construed strictly in favor of those against whom the penalty was sought. "We find no expression in the statute itself," said the court, "indicating that the intention of the legislature is to impose accumulated or aggregated penalties upon an offender who has complied with the law after one penalty has been imposed. In the instant case a single penalty had the effect of making each appellant apply for and obtain a certificate of authority to do business in the state." *Alexander Film Co. et al. v. State, for use of Phillips County,** 147 S. W. 2d 1011. Brickhouse & Brickhouse of Little Rock, for appellants. John L. Anderson and Douglas S. Heslep of Helena, for appellee.

* The full text of this opinion is printed in **The Corporation Tax Service, Arkansas, page 539.**

Indiana.

Contract made in Indiana by an unlicensed foreign corporation ruled not void and held enforceable by its assignee in a federal court. Sec. 4918, Burns Annotated Statutes, 1926, contains a provision that if a foreign corporation transacts business in Indiana without being licensed, "no suit may be maintained, either at law or in equity, upon any claim, legal or equitable, whether arising out of contract or tort, in any court in this state." The question was whether a mortgage given by defendants, residents of Indiana, on Indiana property, to an unlicensed foreign corporation, plaintiff's assignor, could be foreclosed in a federal court, or whether the note and mortgage were void and unenforceable under the statute mentioned, as contended by the defendants. The United States Circuit Court of Appeals, Seventh Circuit, referred to the pertinent decisions of the Indiana

courts and said: "A study of these cases leaves no doubt but that a contract made in Indiana by a foreign corporation which has not complied with the statutory provisions in question, is not void, and may be enforced in the state courts of Indiana by complying with the statute before suit." Plaintiff's assignor had ceased to exist at the time of the institution of the suit. The court ruled that while the assignor was not, therefore, in a position to be qualified in Indiana, it did not follow that it was also barred from the federal courts. As the note and mortgage were still valid obligations, a judgment for the plaintiff was affirmed. *Metropolitan Life Insurance Co. v. Kane,** 117 F. 2d 398. Commerce Clearing House Court Decisions Requisition No. 252686. Hoy D. Davis of Gary, Ind., for appellants. Mitchell D. Follansbee, Clyde E. Shorey and Frederick Barth, of Chicago, Ill., and Albert H. Gavit and Robert E. Richardson of Gary, Ind., for appellee.

* The full text of this opinion is printed in **The Corporation Tax Service**, Indiana, page 304.

New York.

Agreement between stockholders and stranger to corporation for latter's election as president held not illegal. In *Miller v. Vanderlip et al.*, 20 N. Y. S. 2d 330, (The Corporation Journal, January, 1941, page 296), the plaintiff sought to recover for breach of a contract between him and the defendants who were stockholders of a Michigan corporation, the stock of which was widely held. These stockholders, dissatisfied with the policy of the directors, had approached plaintiff to assist them in bringing about a rehabilitation of the company through placing the directors in a position to obtain the services of a sufficient number of competent persons as officers and employees to revitalize the company. The plan provided for plaintiff to become president and general manager. An agreement to give effect to the plan was entered into between the parties. The plan was not, however, submitted to the board of directors by the defendant stockholders and plaintiff sued upon his contract to recover damages alleged to have been sustained, measured by benefits he would have received had the plan been submitted and carried out by the board, including an option to purchase stock of the company. The Supreme Court, Appellate Division, First Department, ruled that such an agreement was unenforcible and contrary to the public policy of the state. Upon appeal, the Court of Appeals of New York stated that the issue was "whether the allegations of the complaint are sufficient to state a cause of action." That court concluded that the allegations were sufficient and to that extent reversed the lower court. Speaking of the legality of the agreement between the parties, the Court of Appeals said: "In the case at bar there is only the very narrow question as to whether men of standing in the business world may undertake to urge a given line of advice upon a company in which they have no interest, and to urge a course of action from which no apparent profit will accrue to the advocates. But even if

it were to be assumed that the defendants were stockholders, and even if it were to be assumed that the defendants would profit as a result of the adoption of the plan, would it necessarily follow that the agreement is illegal? There is nothing in the complaint from which it may be inferred that the profits which would flow to the proponents of the rehabilitation plan would not equally flow to all the other stockholders, except for the fact that the plaintiff would obtain the emoluments of an office, which obviously cannot accrue to more than one, or at most, to a very limited number. In this connection it is to be noted that not even the benefits which would accrue to the plaintiff would be obtained at the expense of any of the other stockholders. The complaint alleges that the compensation which would have been paid to plaintiff would have been a fair and just remuneration for his services to the company. In no sense, therefore, would any one group of stockholders be the recipients of an advantage at the expense of the others." *Miller v. Vanderlip et al.*, 285 N. Y. 116, 33 N. E. 2d 51. Commerce Clearing House Court Decisions Requisition No. 254922. G. Kenneth Brown and William W. Pellet, of New York City, for appellant. Albert Parker and Arthur J. Marangelo, of New York City, for respondents.

North Carolina.

Selling of personal property under conditional sales contracts ruled doing of business for purpose of service of process. Defendant unlicensed foreign corporation had sold plaintiff a therapeutic machine through its North Carolina dealer representative under a conditional sales agreement. After the first four instalments had become delinquent, the dealer representative called at plaintiff's office, in the latter's absence, and repossessed the machine for defendant. This action was brought to recover damages for alleged wrongful seizure of this personal property. Plaintiff attempted to bring defendant into court by service of process on the Secretary of State in accord with the provisions of C. S. Sec. 1137. Defendant entered a special appearance and moved to strike out the purported service of summons on the ground that the defendant was not doing business in the state. The lower court had found that defendant was doing business and denied the motion. Upon appeal, the Supreme Court of North Carolina affirmed this judgment, ruling that the activities of the defendant supported the conclusion that "the defendant was doing the business in North Carolina for which the corporation was created, through its representative, and was thus present in his person." The court also ruled that these activities could not be regarded as a single act carried on in the state, finding that the defendant was making a continuous, and not merely casual or incidental, effort to sell its products in the state. *Parris v. H. G. Fischer & Co.*,* 13 S. E. 2d 540. V. D. Strickland of Rich Square, for plaintiff, appellee. Eric Norfleet of Jackson, for defendant, appellant.

* The full text of this opinion is printed in **The Corporation Tax Service, North Carolina, page 155.**

Taxation

Indiana.

Foreign corporation selling and delivering railroad ties in Indiana which were transported to Ohio for treatment, held subject to gross income tax. Respondent company sought to recover gross income taxes paid to the Department of Treasury of Indiana. It was a Delaware corporation with its main office at Pittsburgh, qualified in Indiana. Under contracts, executed in states other than Indiana, with a railroad company having its principal office in Baltimore, Md., respondent had producers of railroad ties in Indiana and surrounding states deliver them to the railroad in Indiana. The ties were then transported to an Ohio plant for creosoting treatment, being sold to the railroad under the contracts. No payment was received by the respondent in Indiana, payments being made to its Pittsburgh office. It is these payments which were the subject of controversy, the tax being laid by the Indiana authorities on the receipts which the respondent derived from the sale of the untreated ties. These receipts did not include charges for the creosoting treatment, those charges being billed separately when the treatment was completed. The Supreme Court of the United States upheld the tax as imposed under the Gross Income Tax Act of 1933 upon gross income "derived from sources within the State of Indiana." Noting that the creosoting operations in Ohio and the income from them were not involved, the court found no occasion for an apportionment of the tax. It regarded the sale and delivery of the ties to the railroad company in Indiana as local, intrastate transactions. "The transactions," observed the court, "were none the less intrastate activities because the ties thus sold and delivered were forthwith loaded on the railroad cars to go to Ohio for treatment. The contract providing for that treatment called for the treatment of ties to be delivered by the Railroad Company at the Ohio plant, and the ties bought by the Railroad Company in Indiana, as above stated, were transported and delivered by the Railroad Company to that treatment plant. Respondent did not pay the freight for that transportation and the circumstance that the billing was in its name as consignor is not of consequence in the light of the facts showing the completed delivery to the Railroad Company in Indiana. See Superior Oil Co. v. Mississippi, 280 U. S. 390. We find no ground for saying that in taxing the receipts from these local transactions Indiana has exceeded its constitutional authority by taxing interstate commerce or discriminating against it." *Department of Treasury et al. v. The Wood Preserving Corporation,** The Supreme Court of the United States, April 28, 1941; 61 S. Ct. 885. Commerce Clearing House Court Decisions Requisition No. 258209.

* The full text of this opinion is printed in **The Corporation Tax Service, Indiana, page 1473.**

Income of processor held taxable under gross income tax law where customer's goods were transported by it into Indiana for processing and, after processing, returned to points of origin out of

How would you feel? . . . If
the heirs of one of your comp
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state. Respondent owned and operated an enameling factory at Frankfort, Indiana, where it fused enamel with metal parts used in stoves and refrigerators manufactured by its customers located in Indiana and other states. After acceptance by respondent of orders from the customer solicited by its traveling salesmen, their metal parts to be enameled were transported by respondent's trucks from the customer's place of business, both within and without Indiana, to respondent's place of business there. After the completion of the enameling process, the identical parts were returned to the customers, also by respondent's trucks, and incorporated into the customer's products. Thereafter, respondent billed such customers for the enameling and remittances were made to respondent by mail to its Frankfort office. The principal question on these facts was whether the transactions of respondent were in interstate commerce so as to make the gross income therefrom immune from taxation under Article 1, Section 8, of the United States Constitution. The Supreme Court of the United States held that "the enameling process was an activity performed at respondent's plant in Indiana and the gross receipts therefrom were taxable under its Gross Income Tax Law." "The fact that the orders for the enameling were obtained by respondent's agents and contracts were executed outside Indiana did not make the enameling process other than an intrastate activity and any the less a proper subject for the application of the taxing statute." The court regarded the transportation of the metal parts to and from Indiana as incident to the intrastate business. *Department of Treasury, et al. v. Ingram-Richardson Mfg. Co. of Indiana, Inc.,** The Supreme Court of the United States, May 5, 1941; Docket No. 655. Commerce Clearing House Court Decisions Requisition No. 258705; 61 S. Ct. 866. Earl B. Barnes, Alan W. Boyd and Charles M. Wells of Indianapolis, for respondent. Samuel D. Jackson, Attorney General, and Joseph W. Hutchinson and Joseph P. McNamara, Deputy Attys. General, for petitioners.

* The full text of this opinion is printed in **The Corporation Tax Service, Indiana, page 1478.**

Minnesota.

1937 Chain Store Tax Act ruled valid. The Chain Store Tax imposed by Ch. 93, L. 1937, First Special Session, which expired by its own terms on January 1, 1941, has been held valid by the Minnesota Supreme Court. An appeal was taken to that court from the Minnesota District Court, Fourth Judicial District, Hennepin County, which had found the act to be unconstitutional. *C. Thomas Stores Sales System, Inc. v. Spaeth et al.*, 297 N. W. 9. Commerce Clearing House Court Decisions Requisition No. 255082. R. H. Fryberger, of Minneapolis, for respondent. J. A. A. Burnquist, Attorney General, Matthias N. Orfield, Sp. Atty. General, George W. Markham, Sp. Atty. General, of St. Paul, for appellants. R. H. Fryberger of Minneapolis, for respondent.

New Jersey.

State Board of Tax Appeals rules invalid additional assessments of foreign franchise tax resulting from application of Tax Commissioner's formula. In an appeal involving the legality of the method of computation employed by the State Tax Commissioner in assessing the foreign corporation franchise taxes due from the petitioner corporations to the state for the years 1937 and 1938 under P. L. 1937, Ch. 25 (R. S. Sec. 54; 32A-1 et seq.), both petitioners maintained manufacturing plants in the state and sold their product manufactured there to customers within as well as out of the state. The statute based the tax upon "that proportion of the total capital stock issued and outstanding as of January first in each year as the gross income from the business done in this state in the same income year bears to the total gross income from its entire business in the income year." The particular language disputed was "gross income from the business done in this state." The New Jersey State Board of Tax Appeals noted that "the taxpayers made tax returns for the years in question, and paid taxes, upon the basis of a construction of the mooted phrase quoted, which limited it to gross receipts from sales to customers having places of business within the state. The Commissioner audited the returns and assessed additional taxes to the petitioners, proceeding upon a computation of the tax, based upon a construction of the statutory language in question to include within 'gross income from the business done in this state,' so much of the selling price of goods manufactured here, but sold out of the state, as represented the manufacturing cost thereof, comprising cost of materials, labor, preparation of product for shipment, and an allocated proportion of overhead. It has been stipulated in both cases that if the inclusion of the cost of manufacturing in the Commissioner's formula referred to was improper under the act, the additional taxes should be set aside." The Board, after an examination of the language of the statute and of decisions of the state courts and of the Supreme Court of the United States, concluded that the assessments of the additional taxes were illegal, as being unauthorized by the statute. *Wright Aeronautical Corporation v. Martin, State Tax Commissioner,** New Jersey State Board of Tax Appeals, April 16, 1941; 19A 2d 338. Russell E. Watson, of New Brunswick, for petitioners. David T. Wilentz, Attorney General, by John Sloan, for respondent. *(We understand that it is possible that an appeal may be taken to the New Jersey Supreme Court in this case.)*

* The full text of this opinion is printed in **The Corporation Tax Service**, New Jersey, page 1312.

Virginia.

Peddlers' license tax upheld as applied to sales from trucks on regular routes of goods carried into Virginia from another state. Appellant, convicted of peddling in Virginia without having first secured peddlers' license under Sec. 192b of the Tax Code of Vir-

ginia, was a West Virginia corporation, registered in Virginia, into which its trucks carried bread, making deliveries to grocers and other retailers along regular routes at regular intervals. The drivers called only on regular customers, inquiring the amount of bread needed, and this was taken from the truck and delivered. The peddlers' license was imposed upon those who "peddle goods, wares or merchandise by selling and delivering the same at the same time to licensed dealers or retailers at other than a definite place of business operated by the seller." The Supreme Court of the United States affirmed the judgment upholding the conviction of appellant, regarding each transaction of appellant with a customer as a sale and delivery in Virginia. It held untenable appellant's contentions that it was doing either an interstate business "which the State may not burden by imposing a license tax, or an intrastate business as to which the exaction works a forbidden discrimination." The court observed that it was the purely local business of peddling which was taxed and not the transportation of the bread across the State line. It found no discrimination in the fact that manufacturers paying a tax on their capital employed in manufacture in Virginia were exempted or in the exemption of wholesalers paying a license tax as such. Concluding its opinion, the court said: "As we have repeatedly held, the equal protection clause of the Fourteenth Amendment does not prevent a state from classifying businesses for taxation or impose any iron rule of equality. Some occupations may be taxed though others are not. Some may be taxed at one rate, others at a different rate. Classification is not discrimination. It is enough that those in the same class are treated with equality. That is true here." *Caskey Baking Company, Inc. v. Commonwealth of Virginia,** The Supreme Court of the United States, April 28, 1941. Commerce Clearing House Court Decisions Requisition No. 258210; 61 S. Ct. 881. R. Gray Williams, J. Sloan Kuykendall and Martin, Seibert & Beall of Martinsburg, W. Va., for appellant.

* The full text of this opinion is printed in **The Corporation Tax Service, West Virginia, page 7619.**

General

Michigan.

1939 amendment, requiring reports of abandoned property under escheated property law, ruled invalid. The Circuit Court of Ingham County has recently ruled that the amendment, by Act No. 299, P. A. 1939, of the law relating to escheated estates, (Act 238, P. A. 1897), was invalid because the added provisions concerning abandoned property and requiring reports of escheated property were not within the purview of the title of the earlier act, which title had not been enlarged by the 1939 act so as to cover the amended requirements. The court also held that the powers given by the 1939 act to examiners to examine the books and records of every person, firm, copartnership, company or corporation in Michigan was so

broad that the act violated the clause of the State Constitution containing provision against unreasonable searches and seizures. *Evans Products Co. et al. v. Dunckel et al.,** Circuit Court, Ingham County, decided in March, 1941. Commerce Clearing House Court Decisions Requisition No. 256466. *(Note: We are informed that, pending the outcome of an appeal which has been taken in this case to the Supreme Court of Michigan, the State Board of Escheats will not require the filing of a Report of unclaimed monies, securities, etc. which would normally be due, under the 1939 act, within 60 days after demand, or, if not demanded, on or before June 30, annually.)*

* The full text of this opinion is printed in **The Corporation Tax Service,** Michigan, page 3460.

Appealed to The Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

INDIANA. Docket No. 654. *Wood Preserving Corp. v. Department of Treasury,* 114 F. 2d 922. Application of Indiana gross income tax to qualified foreign corporation. **Appeal filed, December 27, 1940. Certiorari granted, February 3, 1941. Argued, April 1, 1941. Judgment reversed, April 28, 1941.** (See page 419.)

INDIANA. Docket No. 655. *Ingram-Richardson Mfg. Co. of Indiana, Inc. v. Department of Treasury,* 114 F. 2d 889. Indiana Gross Income Tax Act—receipts from processing—interstate transportation preceding and following processing. **Appeal filed, December 27, 1940. Certiorari granted, February 3, 1941. Argued, April 1, 1941. Judgment reversed, May 5, 1941.** (See page 419.)

NEW YORK. Docket No. 741. *Klaxon Co. v. Stentor Electric Mfg. Co.,* 115 F. 2d 268. (The Corporation Journal, April, 1941, page 366.) **Appeal filed, February 3, 1941. Certiorari granted, limited to the first question presented by the petition, March 3, 1941.** (The "first question" is: *"Whether a provision of the New York Civil Practice Act regarding monetary interest is applicable to an action in the Federal District Court for Delaware?"*) **Argued, May 1 and 2, 1941.**

VIRGINIA. Docket No. 676. *Caskey Baking Company, Inc. v. Commonwealth of Virginia,* 10 S. E. 2d 535. (The Corporation Journal, April, 1941, page 377.) Sale and delivery of products from trucks—validity of license tax on peddler selling to licensed dealers. **Appeal filed, January 6, 1941. Probable jurisdiction noted, February 3, 1941. Argued, April 2, 1941. Affirmed, April 28, 1941.** (See page 423.)

* Data compiled from CCH **U. S. Supreme Court Service,** 1940-1941.

Regulations and Rulings

COLORADO—The Attorney General of Colorado has advised the State Treasurer that purchases of materials made through the United States Construction Quartermaster are not subject to the sales tax but that purchases made by a contractor for himself are taxable, the exemption being limited solely to articles purchased through the Quartermaster and delivered to the job. (Colorado CT (Corporation Tax) Service, ¶ 7911.)

KENTUCKY—Franchise taxes, in the opinion of the Attorney General, are property taxes and when delinquent the sheriff may proceed to collect them through means of distraint upon the personal property of the delinquent taxpayer. (Opinion of Attorney General, Kentucky CT, ¶ 4-001.)

Tangible personal property of a foreign corporation, warehoused indefinitely in Kentucky, acquires a taxable situs in Kentucky and is subject to state and local taxation. (Opinion of Attorney General to County Attorney of Jefferson County, Kentucky CT, ¶ 24-028.)

The Attorney General of Kentucky has ruled that an Ohio corporation doing no business in Kentucky other than the taking of orders by agents, which orders are submitted to the company in Ohio, filled and shipped by them to the purchasers in Kentucky, is engaged in interstate commerce and is not required to be qualified in Kentucky. (Opinion to the Secretary of State, Kentucky CT, ¶ .407.)

LOUISIANA—The Income Tax Regulations have recently been completely revised. (Louisiana CT, ¶ 10-000.)

MICHIGAN—The accrual date for Federal income tax purposes of the Michigan intangible personal property tax is December 31 of the calendar year 1940 and subsequent years for those taxpayers on a calendar year basis or, for those taxpayers who report on a fiscal year basis in lieu of the calendar year, the last day of such fiscal year. (I. T. 3460, 1941-13-10658 (p. 1). Michigan CT, ¶ 29-020.)

MISSISSIPPI—The sales tax must be collected on all sales to counties, municipalities and other governmental subdivisions other than the United States, the State of Mississippi, its departments and institutions, or public schools, when such schools are supported wholly or in part by funds provided by the State. (Opinion of the Attorney General to the Chairman of the State Tax Commission, Mississippi CT, ¶ 75-017.)

NORTH CAROLINA—The Attorney General has indicated that, in his opinion, United States bonds are exempt from taxation but United States postal savings certificates are taxable under the laws of North Carolina. (North Carolina CT, ¶ 25-101.04.)

PENNSYLVANIA—The Receiver of Taxes of Philadelphia has recently adopted a regulation in connection with the Philadelphia Income Tax requiring the filing of an Annual Summary Report of Total Wages Paid on or before April 1, 1942 and each year thereafter in lieu of the Quarterly Summary Report required of all employers during 1940. (Pennsylvania CT, ¶ 78-023.)

Some Important Matters for June, July, August, September and October

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ARIZONA—Report to Corporation Commission and Registration Fee due during June.—Domestic and Foreign Corporations.

ARKANSAS—Anti-Trust Affidavit due on or before August 1.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before August 10.—Domestic and Foreign Corporations.

CALIFORNIA—Quarterly Retail Sales Tax Returns and Payments due on or before July 15 and October 15.—Domestic and Foreign Corporations.

Franchise Tax based on net income. Second Instalment due September 15.—Domestic and Foreign Corporations.

CONNECTICUT—Annual Report due on or before August 15 (if corporation was organized or qualified between July 1 and December 31 of any previous year).—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due between April 1 and July 1.—Domestic Corporations.

FLORIDA—Annual Report and Fee due on or before July 1.—Domestic and Foreign Corporations.

GEORGIA—Certified Statement for Registration due on or before November 1.—Domestic and Foreign Corporations.

IDAHO—Annual Statement and Annual License Tax due between July 1 and September 1.—Domestic and Foreign Corporations.

ILLINOIS—Annual Franchise Tax due on or before July 1, but may be paid up to July 31 without penalty.—Domestic and Foreign Corporations.

INDIANA—Annual Report due within 30 days after June 30.—Domestic and Foreign Corporations.

Quarterly Gross Income Tax Returns and Payments due on or before July 15 and October 15.—Domestic and Foreign Corporations.

IOWA—Annual Report due between July 1 and August 1.—Domestic and Foreign Corporations.

Statement of Capital and Property Increase due at the time of filing the Annual Report in July.—Foreign Corporations.

Report of Transfers of Stock due on or before July 1.—Domestic Corporations.

Quarterly Retail Sales Tax Returns and Payments due on or before July 20 and October 20.—Domestic and Foreign Corporations.

KENTUCKY—Statement of Existence due on or before July 1.—Foreign Corporations.

Statement of Process Agent due on or before July 1.—Domestic and Foreign Corporations.

List of Resident Stockholders and Bondholders due on or before August 1.—Domestic and Foreign Corporations.

Report of Unclaimed Dividends, Stocks, Moneys, Credits, etc., due on or before September 1.—Domestic and Foreign Corporations.

LOUISIANA—Franchise Tax Report and Tax due on or before October 1.—Domestic and Foreign Corporations.

MAINE—Annual Franchise Tax due September 1; delinquent one month later.—Domestic Corporations.

MARYLAND—Annual Franchise Tax due on or before August 1.—Domestic and Foreign Corporations.

MASSACHUSETTS—Second Instalment of Excise Tax due on or before October 20.—Domestic and Foreign Corporations.

MICHIGAN—Annual Report and Franchise Tax due during July and August.—Domestic and Foreign Corporations.

Report of Unclaimed Moneys, Securities, Credits, etc., due on or before June 30.—Domestic and Foreign Corporations. (Filing suspended pending result of litigation before State Supreme Court.)

MISSISSIPPI—Annual Report and Fee to Factory Inspector due in July.—Domestic and Foreign Corporations employing 5 or more persons in Mississippi.

Annual Franchise Tax Report due on or before July 15.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before July 15.—Domestic and Foreign Corporations.

MISSOURI—Annual Statement, Registration and Anti-Trust Affidavit due during July.—Domestic and Foreign Corporations.

MONTANA—Annual License Tax Based on net income due on or before June 15.—Domestic and Foreign Corporations.

NEBRASKA—Annual Report and Fee due on or before July 1.—Domestic Corporations.

Annual Report and Fee due during July.—Foreign Corporations.

NEVADA—Annual List of Officers and Designation and Acceptance of Resident Agent due on or before July 1.—Domestic and Foreign Corporations.

NEW JERSEY—Franchise Tax Return and Tax due on or before August 15.—Foreign Corporations.

NORTH CAROLINA—Annual Franchise Tax Report and Tax due on or before July 31.—Domestic and Foreign Corporations.

NORTH DAKOTA—Corporation Report due during July.—Domestic Corporations.

Quarterly Retail Sales Tax Returns and Payments due on or before July 20 and October 20.—Domestic and Foreign Corporations.

OHIO—Annual Franchise Tax due on or before July 15.—Domestic and Foreign Corporations.

Retail Sales Tax Returns and Vendors' Excise Tax due on or before July 31.—Domestic and Foreign Corporations.

OKLAHOMA—Annual Capital Stock Affidavit due between July 1 and August 1.—Foreign Corporations.

Annual License Tax Report and Tax due on or before August 31.—Domestic and Foreign Corporations.

OREGON—Annual Report due during June.—Domestic and Foreign Corporations.

Annual License Fee due within 30 days after July 15.—Domestic Corporations.

Annual License Fee due between July 1 and August 15.—Foreign Corporations.

RHODE ISLAND—Corporate Excess Tax due July 1; delinquent after July 15.—Domestic and Foreign Corporations.

Semi-Annual Report to Department of Labor due in October and April.—Domestic and Foreign Corporations employing five or more persons in Rhode Island.

TENNESSEE—Annual Privilege (Franchise) Tax Return and Payment, Annual Report and Tax and Excise Tax Report and Tax due on or before July 1.—Domestic and Foreign Corporations.

Report of Dividends paid to residents due on or before July 1.—Domestic and Foreign Corporations.

UNITED STATES—Second and Third Instalments of Income Tax due June 15 and September 15, respectively.—Domestic Corporations and Foreign Corporations having offices or places of business in the United States.

Capital Stock Tax Return and Payment due on or before July 31.—Domestic and Foreign Corporations.

UTAH—Annual Report to the Industrial Commission due in July.—Domestic and Foreign Corporations employing 3 or more persons in Utah.

WASHINGTON—License Fee due on or before July 1.—Domestic and Foreign Corporations.

WEST VIRGINIA—License Tax Statement due on or before July 1.—Domestic Corporations.

Annual License Tax due on or before July 1.—Domestic and Foreign Corporations.

Fee to State Auditor as Attorney in Fact due on or before July 1.—Foreign Corporations and those Domestic Corporations whose principal places of business or chief works are located in other states.

Quarterly Gross Sales Tax Returns and Payments due on or before July 30 and October 30.—Domestic and Foreign Corporations.

WISCONSIN—Second Installment of Income Tax due on or before August 1.—Domestic and Foreign Corporations.

WYOMING—Annual Statement and License Tax due on or before July 1.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, N. Y.

Amendments to Delaware Corporation Law, 1941. Contains complete text of the amendments adopted at the 1941 session of the legislature, giving for each one a brief explanation of its purpose and effect.

Spot Stocks—and Interstate Commerce. Treats, in a general and informal way, of the relation between the carrying of goods in warehouses in outside states and the statutory obligations which that activity, in some states, places on the corporation owning the goods.

What Constitutes Doing Business. (Revised to March 15, 1939.) A 184-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index make them accessible also by either case name or topic. There is also a section containing citations to cases on the question of doing business such as to make the company subject to service of process in the state.

When a Corporation Leaves Home. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

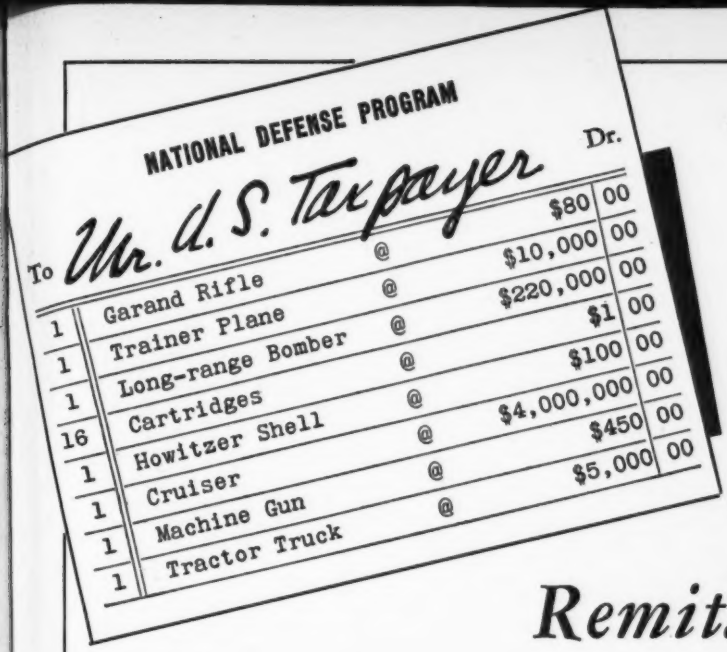
We've Always Got Along This Way. This is a 24-page pamphlet giving brief digests of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employe suddenly found themselves penalized in unusual and often embarrassing ways: such as one company that had to pay its employe-representative's alimony.

What! *We* Need a Transfer Agent? Nonsense! The foregoing is the title of a pamphlet which describes in detail, with many illustrations, the exact steps through which a stock certificate goes in being transferred from one owner to another by an experienced transfer agent—purpose being to enable any corporation official to judge more accurately whether or not his own company should use the services of a transfer agent.

Judgment by Default. Gives the gist of Michigan Supreme Court case of Rarden v. Baker and similar cases in other states, showing how corporations qualified as foreign in any states and utilizing their business employes as statutory representatives are sometimes left defenseless in personal damage and other suits.

A Corporation's Achilles Heel. Containing the complete text of the opinion of the Supreme Court of the United States in State of Washington ex rel. Bond & Goodwin & Tucker, Inc. v. Superior Court, State of Washington, of the Supreme Court of New Mexico in Silva v. Crombie & Co., and of the Supreme Court of Michigan in Rarden v. R. D. Baker Co.—three decisions of great significance to attorneys of corporations qualified in one or more states.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation—completely up-to-date as regards the most recent amendments.



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